Communiqué

NOVEMBER, 2001

IN THIS ISSUE:

Hit your Back Button to return to the top of this index.

Regular Columns

President's Report

Bencher's Meeting Highlights

Allan's Odds and Ends

Membership Changes

In Memoriam

Notice of Bencher Meetings

Special Features

Battle of the Binders IIe

New Annual Trust Account Self-Report Option

Notes From Afar

Keeping It Simple

Thank You to Safe Counsel

Notices to the Profession

Equity Ombudsperson Appointed

Preparing Spousal Wills

Anti-Money Laundering Legislatio

Mentorship

Lawyers At Risk

PRESIDENT'S REPORT

Timothy J.P. Killeen
President

I was first elected as a Bencher in 1994. It is worthwhile to consider some figures from that year. The practising fee was $1,200. This year it is $985. The insurance levy was $2,015. This year it is $1,089. We had 1,229 CLE attendee Last year we had 2,172. In 1994,we prosecuted 20 citations. Last year we prosecuted 12. We held 41 meetings of Complaints Investigation. Last year w had 15.

There have been a lot of other changes over that time. In 1994, when I wanted to practise out of province, I had to apply for a temporary call and pay a sometimes heavy fee. Now I can practise across the west for up to six months in each province eacl year. I can practise across the country on up to ten matters in each province in a year.

In 1994, the law libraries were operated by the Province. We contributed $140,000 anually to the cost. This year our cost is $245,000 and by 2004 when government funding ceases entirely, our cos will be over $600,000. We have responded by providing free library access to Quicklaw and Lexis

Nexis to members. We have worked with the Federation to provide free internet access to our own virtual library through CANLII.

Just 2 years ago, the tuition for the Bar Admission Course rose to $1,400. This year it cost $1,100. Since the majority of fees are paid by the firm, that translates into a further saving to our members.

Since 1994, there have been significant new programs introduced. We now have an Equity Ombudsperson, a Mentorship Program and the very important Lawyers At Risk Program. Not only do we help our colleagues, but we help the rest of us by reducing the potential for errors that end up costing us all money.

How has all of this come about? A variety of factors have helped. The economy has been good. Losing Autopac work has meant many fewer missed limitations. We have been a lot more vigilant in rooting out problems before they become major. Our discipline process now involves mediation which successfully resolved 87 complaints last year. We didn't mediate in 1994, instead we sent out "14 day" letters.

Most importantly, the Benchers decided that we wanted to change. We have made it clear that we are concerned about the cost to our members of doing business. We wanted to treat our members with respect and fairness. We want a Society that protects the public, but we wanted to do that without becoming overly adversarial. The Benchers have been working hard to reduce unnecessary inconvenience to the members. We recently cut our accounting rules by about half. We have now passed a rule allowing for the waiver of the Form D accountant's report for the vast majority of lawyers who have shown that they can keep their books in order without an annual accountant's review. We will continue to do whatever we reasonably can to make life simpler for you.

Where are we going from here? We can't predict the future, but are working to keep our costs as low as possible. We are cooperating at the national level to increase mobility, so that some day we can help our clients irrespective of where their issues arise. We are trying to standardize rules across the country to give everyone equal coverage and access. We are trying to make the Federation of Law Societies an effective voice in protecting the public on important legal issues. We are continuing to do whatever we can to make your Law Society an efficient and effective governing body.

Benchers' Meeting Highlights

Allan Fineblit, Q.C.
Chief Executive Officer

The Benchers of the Law Society of Manitoba met on October 25, 2001 and the following are the highlights of their meeting:

- The Benchers approved new streamlined trust account rules (see the separate article in this issue) that include an optional self-reporting form to replace the old Accountant's Report.
- The Benchers amended all the rules that deemed something to be professional misconduct, to now provide that a breach of those rules without reasonable excuse may constitute professional misconduct.
- The Benchers considered a legal studies Monitoring Report that highlighted some of the

developments in delivery of the Bar Admission program and Continuing Legal Education. Copies of the report are available on request.
- The Benchers appointed Madam Justice Freda Steel to replace Mr. Justice Guy Kroft as Chai of the A. Montague Israels Prize Selection Committee.
- The Benchers honoured David Deutscher who served as Faculty Bencher for over ten years b appointing him an Honourary Life Bencher.

Allan's Odds and Ends

- Congratulations to Joe Gallagher, Law Society of Manitoba General Counsel, who just survived five years in the jungles of the Law Society with only his Code of Conduct and leftover sandwiches to sustain him.
- The Complaints Investigation Committee Chair, Donna Miller, has a new title. She is Justice Canada's new Senior Regional Director of the Prairie Region
- Check out www.canlii.org, the Federation of Law Societies virtual library site. It now has all Canadian Court of Appeal decisions, the Supreme Court of Canada decisions, decisions from the Federal Court, the Tax Court and the Competition Tribunal. It also has statutes and regulations from many jurisdictions and lots of trial level decisions, including the Manitoba Court of Queen's Bench, and the Manitoba Provincial Court is coming soon.
- Welcome to Nancy Fazenda, the newly elected Student Bencher.

Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Inactive to Practising
September 17, 2001 Laurence J. Gillespie
September 19, 2001 Wendy D. Post October 1, 2001 Alvin C. Hamilton, Q.C.

Non-Practising to Practising
September 20, 2001 Shelley L. Haner
October 9, 2001 Dominique J. Alford
October 25, 2001 Alexander C. Phillips

Practising to Non-Practising
September 26, 2001 Jennifer L. Funk

Practising to Inactive
July 7, 2001 Todd W. Thomson
September 22, 2001 Rene J. Gantzert
September 22, 2001 Christopher B. Tugwell
September 28, 2001 Joan G. McKelvey
October 3, 2001 Robert D.J. Dawson

Transfer from Another Province
Anne K. Barkman of the Law Society of Upper Canada was called to the Bar of Manitoba on October 9, 2001 and is now entitled to practise law in this jurisdiction, having fulfilled the requirements of Rule 99.

Call to the Bar
Andrew S. Barg was called to the Bar of Manitoba on October 23, 2001 after successfully completing the requirements of the bar admission course and articling program.

In Memoriam

The Honourable Archibald Stewart Dewar who passed away on July 7, 2001 at the age of 84. Prior to receiving his call to the Bar in 1948, Mr. Dewar worked as a police constable with the Winnipeg Police Department from 1938 to 1940 and then served overseas with the Royal Canadian Artillery during the Second World War. During his career as a lawyer, he practised briefly as a solicitor with the Department of National Health and Welfare in Ottawa before returning to Winnipeg where he was employed as a Crown Attorney for the Province. In 1957, Mr. Dewar joine the firm Thompson Dilts and Company, which firm would later become known as Thompson Dewa Sweatman, where he took on the role of managing partner. Mr. Dewar was appointed Queen's Counsel in 1961. He served as a Bencher of the Law Society from May, 1971 to September, 1973 and also as Honourary Secretary of the Law Society from May to September, 1973. In September, 1973 he was appointed Chief Justice of the Court of Queen's Bench, a position he held until his retirement in 1985. In January, 2001 Mr. Dewar was appointed an Honourary Member of the Law Society.

David Carl Bjarnason who passed away on August 13, 2001 at the age of 70. Mr. Bjarnason received his call to the Bar in 1956 and later obtained his Masters in Law. He began his career as counsel with Great-West Life Assurance Company and later moved to Investors Group where he eventually assumed the position of Senior Vice President of Corporate Affairs and Secretary. Mr. Bjarnason retired at the age of 62.

John Louis Bowles who passed away on August 16, 2001 at the age of 68. Mr. Bowles received hi call in Manitoba in 1972. He enjoyed a distinguished career as a litigation lawyer in Ontario, Queb and Manitoba and was employed with the Legal Services Department of Canadian Pacific Railway for 18 years. At the time of his death, Mr. Bowles was counsel to Fasken Martineau DuMoulin LLI in Toronto.

William Murray Coghlin, Q.C., who passed away on September 27, 2001 at the age of 78. Mr. Coghlin received his call to the Bar in May, 1950 and was admitted as a solicitor in November, 195 Mr. Coghlin practised law with Pitblado Hoskin for 38 years until his retirement in 1988, specializing in corporate and business law. In December, 1978, Mr. Coghlin was appointed Queen' Counsel.

Campbell Myers MacInnes, who passed away on October 2, 2001 at the age of 79. Mr. MacInnes received his call to the Bar in May, 1948. Mr. MacInnes practised law in Winnipeg for three years with the firm, MacInnes Burbidge. He then moved to Alberta, where he was employed as chief counsel for an oil company in Calgary for 26 years. Mr. MacInnes was retired at the time of his

death.

Locksley Donald Charles McNeill who passed away on October 17, 2001 at the age of 98. Mr. McNeill received his call to the Bar on June 4, 1931 and was admitted as a solicitor on July 15, 194 Following his call, Mr. McNeill practised with the firm of Fillmore & Riley. In 1934 he was appointed Chair of the Manitoba Censure Board, and from 1935 to 1943 he was Executive Assistar to Premier John Bracken and Deputy Clerk of the Manitoba Cabinet. He served as Solicitor to the Manitoba Cabinet until 1945 when he was appointed Chairman of the Old Age Pension Board and Director of Elderly Persons Housing. In addition to this, he also served on eight other government boards, five of which he chaired. He retired in 1970 but continued to practice privately until 1982. I 1981, he was honoured by the Law Society of Manitoba for having practised law for 50 years. Mr. McNeill was also an avid inventor and has five patented inventions, with another pending in 2001.

Notice of Benchers' Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, December 13, 2001 at 12:30 p.m.** in the Society's Classroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society, and especially members of the Western Bar Association, are encouraged to attend and participate in the deliberations of the governing body.

Battle of the Binders II

Marilyn Billinkoff
Deputy Chief Executive Officer

In the September, 2000 issue of Communiqué, Allan Fineblit put the profession on notice that he intended to reduce the size of the Law Society's Handbook of Professional Conduct (that large gree binder that many of you use as a doorstop). Its 75 millimetres of content included The Law Society Act, Rules, Code of Professional Conduct, Practice Directions, Discipline Case Digests, and the Policy of Insurance. Measuring in at 15 millimetres (or 20% of the Handbook) were 118 pages of Rules, including 19 pages of Rules Respecting Accounts. On October 25, 2001, these accounting rules were cut in half when the Benchers approved new rules intended to streamline the accounting requirements without compromising the Law Society's ability to ensure that members maintain up-to-date trust records and deal appropriately with clients' money.

The new trust accounting rules are included in this mailing for insertion in your green binder (and remember to take out the old rules if you want your binder to close). Much of the bookkeeping language found in the rules has been removed, leaving intact basic requirements such as members' obligations to maintain trust records and prepare monthly trust reconciliations. A manual on how to maintain accurate accounting records – for members who feel that they could use some assistance i day-to-day record-keeping – is also in the works.

Some of the major changes to the rules are:

- simpler definitions for many of the accounting terms;
- simpler rules relating to maintaining trust records;
- fewer rules dealing with computer trust records;

- offering most members the option of filing either a Form D or a Self-Report (see article below);
- eliminating the administrative suspension provision that takes effect when a member fails to file his or her trust account report and instead, authorizing the CEO to send out an auditor to audit the member's accounting records. The member will be required to reimburse the Law Society for the cost of the audit;
- the old rules stated that a member's failure to comply with any of the accounting rules constituted professional misconduct. The new rules say that failure to comply with the rules without reasonable excuse may constitute professional misconduct.

So how goes the battle? Well, one year after Allan's admitted defeat to the 4.5 inch binder, he's come back swinging. New trust accounting rules are streamlined and easier to follow. The option o replacing the accountant's report with a Self-Report should save members some money. Yes, there are other rules to look at and practice directions to review, but by my count its Binder 1 – Allan 1. Not bad for a guy who spent his summer shopping for a new dentist.

New Annual Trust Account Self-Report Option

While the new trust accounting rules still require members to file an Annual Trust Account Report confirming their compliance with the accounting rules, most members will now have the option of filing either a Form D (which includes an accountant's report) or a Self-Report. The self-reporting option is being implemented as a pilot project and will be re-evaluated after a two year time period.

All members, except those with a history of significant breaches of the accounting rules, will qualif to participate in the Self-Report pilot project. Unlike a Form D, a Self-Report must be filed within 8 weeks following a firm's trust year end. For example, members with December 31 year ends must file their Self-Report no later than February 25, 2002. Members with June 30 year ends must file their Self-Report no later than August 26, 2002. The Self-Report requires members to answer the same general questions that are found in the old Form D. Additionally, members must review their trust accounting records, complete a questionnaire and attach copies of bank records, such as their client trust listing and their books of original entry, bank statements and monthly trust reconciliatio for all pooled and specific trust investment accounts for the last month of their trust year. These are all records that members are required to maintain. Members will not need to prepare anything new.

The Law Society will write to all members with trust accounts with detailed information. For those who qualify, self-reporting is optional, and members can, if they like, elect to continue filing the current Form D.

The new Self-Report and a revised Form D will soon be available on the Law Society website.

Notes From Afar

Recently called lawyer, David Andrews is working as a human rights intern at a legal assistance centre in Windhoek, Namibia. What follows are excerpts from his e-mail diary dated 09/09/2001.

We have new digs. A flat in Klein - Windhoek which is in the Hills just west/north of town. Our landlord told us it was a 15 minute walk from town - perhaps for an Oryx (large and very fast

antelope). Its best feature is that no matter which way you are heading, coming or going, it is uphill both ways. Of course this is good for me, but when you wake up and it is 30 degrees, this is not the most appealing form of physical exertion…

In a lot of ways Windhoek is a small and friendly city of 160,000. It is urban, but not so cosmopolitan that it doesn't retain some of the small town values that some Canadians cherish. The other day at about 7:30 a.m., we were walking to the Legal Assistance Centre dressed for business. Mostly we were not enjoying the walk because the dogs are not, as I say, friendly puppy dogs, but vicious killers who bark ferociously at all passers-by, real and imagined. On the way a professional women in a white BMW stopped and offered us a ride…It turns out that she is the Executive Director of the Law Society of Namibia, and we had not yet met her. She was just being a good sou and none of us could imagine the CEOs of any of our respective Law Societies picking strangers up on the way to work…

Because of work and other priorities, most of our friends here are black. I suppose that is why we hate our area so much, none of them live nearby. I innocently enough asked about several nightspot that I heard about around town of those same friends. In some of those places, they are not welcom So we won't be visiting those establishments. I get pretty upset, every time I inquire about a new place to hang-out, to have to ask if it welcomes mixed parties. Of course I would never ask my friends to take me somewhere they weren't welcome, but it is worse not knowing and being afraid that you'll do it unwittingly. I couldn't even conceive of asking if an establishment is mixed in Canada, I can't really conceive of it here either - so it makes me mad….

On Wednesday we started to really enjoy ourselves. Sue and Heather's work, the Legal Assistance Centre, has opened up a whole new world of social opportunities for us. They are very prolific, dedicated and hardworking Human Rights Lawyers, who like to have a good time. They are the wo hard, play hard types I met in Law School - before we just became the work hard types. Not really invited, I crashed a party with Sue and Heather at the US embassy. Somebody was being congratulated for something, nobody cared because they had brought in a real live New York City jazz band for the occasion. The Aaron Thurston Trio, unknown in the US and Canada, are the bigge thing to hit Windhoek since Michael Jackson rolled through a few(10)years ago...

It would be a breach of privilege to reveal much, but Leigh-Anne knew her client well, and had already arranged for her to be released from custody and was now to be arraigned. The client, three Canadians, two LAC articling students and Chief Counsel Leigh-Anne headed for the Katatura Courthouse in a mini-bus. I love courthouses and couldn't sit still once we got there. Everything wa of course different, but exactly the same as the Winnipeg courthouse where I had previously cut my teeth. A throng of people gathered around the docket: accused trying to find their names on the list; police officers looking for where they were to testify; and witnesses just generally lost. And of course a couple of young defense lawyers wandering aimlessly looking for their clients who were t meet them early before court. The lawyers went to find the prosecutor whom that morning had 50 c 60 files dumped on his desk for bails. All that was missing was Chris Sigurdson (though I met his Namibian counterpart, on his way to interview people in the jail no less) and a video monitor. A de was struck, an admission of guilt for a small fine. (Criminal lawyers reading this could have predicted the outcome from the start of the story I'm sure.) Court started late and because the articling student had taken over the case by now, we had to wait for the end of the docket. It seeme every time she got started, senior counsel walked in and she had to stand down for them. Most of th applicants for bail were a little unsure of their addresses, but promised the Magistrate if they could go home they wouldn't get into trouble again - even though they were innocent in the first place, of course. So the only surprise was how like home this was. A word on Counsel Agnew. At age 25 or

so, she has been practicing for two years and is a seasoned courtroom lawyer already. She works in the Gender Department of the LAC challenging the Government in its treatment of the women citizens of Namibia. I get the sense that Magistrates Court was a rare appearance for her, she does her work in the High Court, and only then, when a human rights issue is of some significance - otherwise she doesn't take on case work. Human rights have a special significance for her because she is a young black professional woman raising a beautiful baby daughter on her own. In Canada v would admire and respect her, I think she gets a little bit rougher ride in Namibia…

As you know from my previous notes, Katatura is the black township in Windhoek. Established during Apartheid it literally means, the place where we have been told to live and don't want to (amazing that there is a word for that, but when you think about the history here, maybe not so amazing). Nothing in life prepared me for what I saw. The community itself is developed and as we drove on from the town square the houses grew smaller and less cared for. Within a few blocks we were in the tin village, or squatter town. Miles, for as far as the eye could see, of makeshift tin shacks...

I think about my friends at West Broadway. The Katatura township and West Broadway have few things in common, but the sense of community is strong in West Broadway despite the occasional difference. In Katatura the social fabric is being ripped apart by a hopelessness over a lack of improvement in conditions in the 10 years since Apartheid officially ended. Children wandering around in the middle of the day, wave at us. Of course we wave back, horrified to learn that many c them are abandoned to wander the streets….From the top of the hill we saw shacks all the way to tl horizon in every direction.

Later on they take us for some strong coffee which we appreciate at this point. The articling studen tell funny stories about articling, which make us feel like we have a great deal in common with thei Then they speak of going to Northern Namibia to interview witnesses for a case the LAC is bringin against the Government on behalf of the families of the "disappeared", who have resisted attempts l the government to "modernize" Namibia. They mention that in this part of the world, Human Right Lawyers themselves "disappear". We were starting to feel comfortable again thinking of all the wa articling in Namibia is like articling in Canada. Articling students in Canada don't often "disappear though and if they do it is usually to the Mall during Bar Ad classes…

I guess it is my age, but everywhere I go, I meet people with young children - they are always a lot fun, and they always give me hope. Perhaps if their parents continue to lay the groundwork, and us well-meaning foreigners pitch-in now and then, they will live in a very different Africa then they were born into and currently know.

Keeping It Simple

Allan Fineblit, Q.C.
Chief Executive Officer

I took a vacation in the woods this summer and I decided that I'd take a vacation from shaving as well. The result was, well…grey. My children suggested I trim it into what used to be called a "goatee". Now I figured if Jeff Hirsch can look that good, maybe it could do something for me. The last time I had a goatee I was wearing a black turtleneck, listening to bongo drums in a restaurant

called The Java Shop…but I digress.

So, on Monday morning I came to work and ran smack dab into one of my co-workers, Ellie Turne Ellie is something of a touchstone for me on matters sartorial and her only comment was, "I wish I could say I liked it."

What is it about the distant past that makes it seem oh so sweet? A couple of nostalgic fellows took me to lunch last week (actually, I took them but it was only fish and chips). They talked about practising law in the good old days when Harold Stubbs ran the Law Society. (Harold, by the way, still patrols the golf courses of south Winnipeg.) There can be no doubt that they were reflecting on simpler times. Those were the days of a much smaller and closer knit legal community. There was more homogeneous vision of the world and unlike my ill-fated goatee, only a few shades of grey.

I do my job today in a world where nuance and subtle differences are so important. The difference between innovative marketing and professional misconduct can be as narrow as a few words or eve tone. I crave a simpler world (especially after September 11) and I expect sometimes so do you.

One of my buddies regularly and proudly informs me that he never reads the Code of Conduct, he just always does the right thing. My problem is I don't always know what the right thing is. There are days when nothing seems right. So…while I don't recommend your throwing out your copy of the Code of Conduct, I am attracted to simpler rules and very much attracted to the fundamental principle of doing the right thing. So how does one incorporate 1950s simplicity into the complex Law Society of 2001? Here is my recipe:

1. Fewer rules
Too often the lawyerly solution to a problem is to make a rule. Elsewhere in this issue you'll see information about the much abridged trust accounting rules. Benchers also approved a much smalle Law Society Act that is now in the capable drafting hands of legislative counsel.

2. Pick up the phone
Not every problem requires a formal process to address it. Ninety percent of the time, all anybody really needs is to be told they made a mistake and for me, all I really need to hear in response is the simple phrase, "I made a mistake and I'll do what I can to fix it." Last year we mediated twice as many complaints as the year before and surprise, surprise, the Complaints Investigation Committee authorized one-third fewer charges.

3. Do the right thing
At the end of the day there are lines that you can't cross. You won't be sanctioned for minor matter very often but when one of our colleagues goes too far, you can expect us to be swift in our respons and effective in the outcome. (Why am I sounding like George Bush so much lately and more importantly, why don't I mind?) Last year's numbers show that the investigation and prosecution o complaints is much faster than it used to be and when we prosecute, we almost always convict.

4. Just answer the question
In a complex world, its nice to be able to ask someone the hard questions. We streamlined our Practice and Ethics Committee into small sub-committees of experts who can often answer those "zingers". If you are in a real hurry, anyone here is happy to help. I am especially keen, so call me directly at 926-2014.

I just looked out my window and I swear I saw a guy wearing a tie-dye shirt and bell-bottom pants.

As Ellie Turner will tell you, there are certain things that we remember with fondness from our pas that are best left there. I'll leave you with that simple thought.

Thank You to Safe Counsel

The hiring of Equity Ombudsperson Brenlee Carrington Trepel signifies not only the beginning of a new process for dealing with equity issues but also the end of the Safe Counsel Program. Several lawyers have served as Safe Counsel since December 1995 and have been accessible to individuals needing help in dealing with issues of harassment and discrimination within the legal profession. Th Law Society of Manitoba would like to thank Safe Counsel **Jennifer A. Cooper, Q.C., William E. Doyle, Lori C. Ferguson Sain, Roger B. King, Q.C., Sandra D. Phillips** and **Priti Shah** for volunteering their time and expertise over the past six years and for their commitment to the Safe Counsel Program.

Equity Ombudsperson Appointed

The Law Society of Manitoba is pleased to announce the appointment of Brenlee Carrington Trepel as Equity Ombudsperson, effective November 1, 2001.

The Equity Ombudsperson provides strictly confidential, neutral assistance to lawyers, support staff working for legal employers, articling students and clien who have concerns about any kind of discrimination or harassment.

The Equity Ombudsperson cannot disclose the identity of callers without their consent.

The Equity Ombudsperson will also provide educational services to members through personal speaking engagements and publications.

Brenlee Carrington Trepel is a lawyer and a renowned broadcast and print journalist. She was calle to the Manitoba Bar in 1999 and received the Law Society of Manitoba's A. Montague Israels Q.C. Prize.

Like the Lawyers At Risk program, which the Law Society successfully introduced this past May, the Equity Ombudsperson offers strict confidentiality.

Brenlee may be reached confidentially by:
Phone: 942-2002
Toll-free outside Winnipeg: 1-866-771-2002
E-Mail: brenleecarrington@shaw.ca
Fax:: 474-1161
Mail: Brenlee Carrington Trepel, P.O. Box 2555 - Station Main, Winnipeg, MB R3C 4B3

Notice to the Profession Re: Preparing Spousal Wills

C. Kristin Dangerfield
General Counsel

Members are frequently retained to prepare wills on behalf of a husband and wife. The lawyer meet with the spouses to review their assets and to take instructions. The wills are prepared and executed What is the lawyer's ethical obligation if one spouse subsequently returns and asks that his/her own will be altered, but does not wish those alterations to be made known to the other spouse? Should that information be conveyed to the other spouse? Must it be conveyed to the other spouse? In the event that the lawyer does not convey the information, has the lawyer breached a duty owed to the unsuspecting spouse? If the lawyer does convey the information, has the lawyer breached a duty owed to the spouse who made the request? How does one avoid being placed in this jackpot in the first place?

The lawyer who takes joint instructions from a couple for the preparation of their wills should be guided by the provisions of Chapter 4 and Chapter 5, Commentaries 5 and 6 of the Code of Professional Conduct as they pertain to joint retainers. A joint retainer is one in which a lawyer is employed by more than one client in a matter or transaction. Prior to accepting the retainer the lawyer should advise those clients that:

a. The lawyer has been asked to act for both of them;
b. No information received in connection with the matter from one may be treated as confidenti so far as the other is concerned; and
c. If a conflict develops that cannot be resolved, (i.e. one client later requests changes that conflict with the instructions of the other) then both individuals must be referred to other counsel.

In order to satisfy him or herself that the spouses are in agreement with respect to the distribution o their respective estates, the lawyer may meet with the spouses separately prior to the execution of tl wills.

If one spouse later requests that his/her own will be altered, but does not wish those changes to be made known to the other spouse, it is the opinion of the Practice and Ethics Committee that accepting the retainer could infringe Chapter 5, Commentary 8 of the Code of Professional Conduc which prevents a lawyer from acting against a client in the same or any related matter. Accordingly the prudent course of action on the part of the lawyer would be to decline the new retainer. It is alsc the view of the Committee that such a communication is made in confidence to the member and would not be the subject of the earlier joint retainer. The communication should therefore not be disclosed to the other spouse in the absence of the client's consent. The lawyer should be guided by Chapter 4 of the Code of Professional Conduct with respect to confidential communications.

Lawyer Gets $500,000 Fine & Six Months in Prison

Tana Christianson
Director of Insurance

This headline is more than an attention grabber. In future years, we may be reporting on fines and prison terms like this, or more onerous, imposed on lawyers and law firm staff because of their failure to comply with the record keeping and reporting requirements of Proceeds of Crime legislation.

Phase one of the Federal Government's Anti-Money Laundering Legislation begins November 8, 2001. Under the new Proceeds of Crime (Money Laundering) Act, S.C. 2000 c.17, starting November 8, lawyers and their law office staff will be obliged by statute to report all suspicious transactions.

Failure to report a "suspicious transaction" has rather draconian consequences, including fines of u to $2 million and/or five years in prison. (And fines are not covered by your Professional Liability Insurance.)

The legislation makes it mandatory for lawyers and law firm staff to report specific detailed information about certain client related transactions to a newly created government agency called tl Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). To access the Act and regulations and FINTRAC's guidelines, go to www.fintrac.gc.ca.

In addition to the requirement to report "suspicious transactions", lawyers have to keep records of certain financial transactions and report those transactions (without notifying their clients of those reports). FINTRAC can search your office, without a warrant, to see if you are complying. Failure t comply with the record keeping obligation can also result in stiff penalties.

Although lawyers have a duty to report suspicious transactions and co-operate if searched, solicitor/client privilege may apply – but the onus is on the lawyer to assert privilege. We recommend a Law Society of Upper Canada Advisory Services Paper titled "Proceeds of Crime", The (Money Laundering) Act and The Rules of Professional Conduct on that issue.

The record keeping obligations established under the legislation are onerous. Fortunately, the Law Society of British Columbia and the Law Society of Upper Canada (Ontario) have collaborated on a Guide to Managing a Law Firm's Obligations under the Proceeds of Crime legislation as well as a Compliance Manual. These two manuals are an absolute must read. Both are available for downloading at www.practicepro.ca.

As the various provisions of the new legislation are phased in over time (including new provisions recently introduced to address money laundering and financing of terrorist organizations) the websites we've cited will be updated on-line. Continuing Legal Education programs were offered o October 22 and 23 in Brandon and Winnipeg. As the legislation develops, additional seminars may be offered. Program materials that include the legislation, the Guide and Compliance Manual mentioned above, and other information can be ordered from Legal Studies (contact Debbie 942-5571).

You should also be aware that the Federation of Law Societies has filed a Charter Challenge to the portions of the legislation that appear to erode the principles of solicitor/client confidentiality. We will keep you advised as that litigation progresses.

Mentorship

Do you need a mentor? Would you be willing to act as one? The joint Manitoba Bar Association/Law Society of Manitoba Mentorship Program matches lawyers who need advice in their field of law with experienced practitioners in that field. If you would like to volunteer to be a mentor or would like to be matched with one, please contact:

Lynne Wilson at 946-7232, E-mail: lynne.wilson@gwl.ca
or
Allan Fineblit at 926-2014, E-mail: afineblit@lawsociety.mb.ca

Lawyers At Risk

This is a totally confidential and free service run by Manitoba Blue Cross for lawyers and their families who need help coping with stress or addiction. Call 786-8880 or toll free 1-800-590-5553 anytime.

COMMUNIQUÉ BACK ISSUES

July 2001
December 2000
September 2000
May 2000
January 2000
October 1999
May 1999
January 1999
September 1998
May 1998